Inland Empire Waterkeeper
Advocacy • Education • Restoration • Enforcement

6876 Indiana Avenue, Suite D
Riverside, CA 92506
Phone (951) 530-8823
Fax (951) 530-8824
Website www.iewaterkeeper.org

October 8, 2013

VIA CERTIFIED MAIL

Burrtec Waste Group, Inc.
9890 Cherry Avenue
Fontana, California 92335

Burrtec Waste Industries, Inc.
9890 Cherry Avenue
Fontana, California 92335

RA Nelson MRF Transfer Station
Managing Agent
1830 Agua Mansa Road
Riverside, California, 92509

Agua Mansa MRF, LLC
13373 Napa Street
Fontana, California 92335

VIA U.S MAIL

Cole Burr
Registered Agent
Burrtec Waste Group, Inc.
9890 Cherry Avenue
Fontana, California 92335

Cole Burr
Registered Agent
Burrtec Waste Industries, Inc.
9890 Cherry Avenue
Fontana, California 92335

Cole Burr
Registered Agent
Agua Mansa MRF, LLC
9890 Cherry Avenue
Fontana, California 92335

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") in regard to violations of the Clean Water Act[1] and California's Storm Water Permit[2] occurring at 1830 and 1850 Agua Mansa Road in Riverside California ("RA Nelson Facility" or "Facility"). This letter is being sent to you as the responsible owners and/or operators of the RA Nelson Facility, or as the registered agent for those entities. This letter puts Burrtec Waste Group, Inc., Burrtec Waste Industries, Inc., and Agua Mansa MRF, LLC (hereinafter referred to as the "RA Nelson Facility Owners and/or Operators"), on notice of the violations of the Storm Water Permit occurring at the RA Nelson Facility including, but not

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, the RA Nelson Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that a citizen give notice of his/her intention to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a). Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

By this letter issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, (hereinafter "Notice Letter"), Waterkeeper puts the RA Nelson Facility Owners and/or Operators on notice that, after the expiration of sixty (60) days from the date of this Notice Letter, Waterkeeper intends to file an enforcement action in Federal court against them for violations of the Storm Water Permit and the Clean Water Act.

I. BACKGROUND

A. Inland Empire Waterkeeper and Orange County Coastkeeper

Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Inland Empire Waterkeeper is a chapter of Orange County Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Inland Empire Waterkeeper and Orange County Coastkeeper have over 2,000 members who live and/or recreate in and around San Bernardino County and the Santa Ana River watershed. Inland Empire Waterkeeper and Orange County Coastkeeper are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of their local watersheds. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper use and enjoy the waters into which the RA Nelson Facility discharges into, including the Santa Ana River and its tributaries. Members of Waterkeeper use and enjoy the Santa Ana River and its tributaries to picnic, hike, view wildlife, and engage in scientific study, including monitoring activities, among other things. Procedural and substantive violations of the Storm Water Permit including, but not limited to, the discharge of pollutants from the RA Nelson Facility, impairs each of these uses. Further, these violations are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by the RA Nelson Facility Owners' and/or Operators' failure to comply with the Storm Water Permit and the Clean Water Act.

B. The Owners and/or Operators of the RA Nelson Facility

Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #3. The RA Nelson Facility Owners' and/or Operators' NOI was approved by the State Board on January 14, 2009. Waterkeeper obtained a second NOI from the State Board, dated July 6, 2012, which is unsigned. It identifies the Facility name and location as "RA Nelson MRF Transfer Station, 1830 Agua Mansa Road, 1850 Agua Mansa Road, Riverside," and lists the Facility operator as "Agua Mansa MRF, LLC." The Facility's Waste Discharge Identification ("WDID") number is 8-33I021996.

Information available to Waterkeeper indicates that Agua Mansa MRF, LLC is an owner and/or operator of the RA Nelson Facility. Information available to Waterkeeper indicates that Burrtec Waste Industries, Inc. is also an owner and/or operator of the RA Nelson Facility. Finally, information available to Waterkeeper indicates that Burrtec Waste Group, Inc. an owner and/or operator of the RA Nelson Facility. Burrtec Waste Group, Inc. and Burrtec Waste Industries, Inc. are active corporations registered in California, and Agua Mansa MRF, LLC is an active limited liability company registered in California. The registered agent for all three entities is Cole Burr, 9890 Cherry Avenue in Fontana, California 92335.

The RA Nelson Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the RA Nelson Facility into local waters.

C. Storm Water Pollution and the Water Receiving the Facility's Discharges

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the RA Nelson Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and adversely impact aquatic-dependent wildlife. These contaminated discharges can and must be controlled for downstream ecosystems to regain their health.

Storm water discharges from waste transfer and recycling facilities like the RA Nelson Facility, contain pollutants such as: Oil & Grease ("O&G"); heavy metals (such as copper, iron, lead, aluminum, and zinc); Total Suspended Solids ("TSS"), nutrients, synthetic organic compounds, pesticides, pathogens, and trash, debris and floatables. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the Santa Ana River and its tributaries pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The RA Nelson Facility discharges into the municipal separate storm sewer system ("MS4") operated by the City of Fontana and/or Riverside County, which discharges to the Santa Ana River and its tributaries (collectively "Receiving Waters"). The Santa Ana River is an ecologically sensitive area. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, the Receiving Waters still provide essential habitat for dozens of fish, bird, and invertebrate species. These pollutants harm the special aesthetic and recreational significance that the Receiving Waters has for people in the surrounding communities, including Waterkeeper's members. The public's use of the Receiving Waters for water contact sports exposes people to toxic metals and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. . The Beneficial Uses for the Santa Ana River near or downstream of the point at which it receives polluted storm water discharges from the RA Nelson Facility (i.e., Santa Ana River Reaches 1 – 4) include: Agricultural Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened or Endangered Species. *See* Basin Plan at Table 3-1. According to the 2010 303(d) List of Impaired Water Bodies, Reach 4 of the Santa Ana River is impaired for pathogens; Reach 3 of the Santa Ana River is impaired for copper, lead, and pathogens; and Reach 2 of the Santa Ana River is impaired for indicator bacteria.[1] Polluted discharges from industrial sites, such as the RA Nelson Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

II. THE RA NELSON FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. RA Nelson Facility Site Description

The RA Nelson Facility Storm Water Pollution Prevention Plan ("SWPPP") states that the Facility is 21.4 acres, over half of which is impervious. The SWPPP describes the Facility as having a Transfer Station Building, located near the center of the site, which is the main building at the Facility. This Transfer Station Building contains a waste transfer station, a material recovery facility, administrative offices, an area used to receive recyclable materials from the public, an area used to receive mixed commercial wastes, and an area used to store hazardous materials. Located adjacent to the northeast side of the Transfer Station Building is an uncovered area used for green waste operations. To the northeast of this green waste area, in the northeast corner of the Facility, is an uncovered area used for food waste and green waste composting. Located adjacent to the south and southeast sides of the Transfer Station Building is an uncovered construction debris area, and located along the southeast side of the Transfer Station Building is a ramp and a waste transfer tunnel. There are two points of ingress/egress from the Facility to Agua Mansa Road, referred to in this Notice Letter as "Driveway 1" and "Driveway 2." Driveway 1 is located along to the north of the main employee parking lot, and Driveway 2 is

located to the south of the main employee parking lot. The southwestern corner of the Facility is used for vehicle maintenance, cleaning operations, and storage. Located in this area is a vehicle maintenance building, and an uncovered area used for equipment and vehicle parking is located to the east and southeast side of the maintenance building. Uncovered scales and an uncovered fueling island are also located to the southeast of the truck maintenance building.

B. RA Nelson Facility Industrial Activities and Associated Pollutants

According to the RA Nelson Facility SWPPP, the Facility is a waste disposal, transfer and recycling facility. The Facility accepts municipal solid waste, recyclable materials, green and wood wastes, and construction and demolition debris. These materials are sorted at the Facility. Recyclable materials are separated from other waste and sold, organic materials are processed into soil amendments, and the remaining materials are transported to a landfill. Vehicle and equipment maintenance, cleaning operations, and refueling are also conducted at the Facility.

The RA Nelson Facility Owners' and/or Operators' industrial activities are pollutant sources and include, but are not limited to: processing, loading, and unloading of solid waste and recyclable materials such as hazardous materials, green/wood waste and construction/demolition materials; green waste grinding; production of soil amendment from green wastes; storage of solid waste materials including, but not limited to, household hazardous materials; vehicle and equipment cleaning operations; vehicle and equipment refueling; vehicle and equipment maintenance; storage of materials associated with equipment and vehicle maintenance; and storage of vehicles and equipment. The RA Nelson Facility Owners and/or Operators also store and/or generate hazardous wastes such as oil, hydraulic fluid, brake fluid, and antifreeze.

The 2009 and 2012 NOI for the RA Nelson Facility listed the Standard Industrial Classification ("SIC") Code for the Facility as 4212. However, the RA Nelson Facility SWPPP, which is dated 2010 and 2013, lists the following SIC Codes for the Facility: 4953 (Hazardous Waste Treatment Storage or Disposal), 4212 (Local Trucking Without Storage), and 5093 (Scrap and Waste Materials). Facilities classified under SIC Codes 4953 and 5093 require Storm Water Permit coverage for the entire facility. Even if the RA Nelson was only classified as SIC Code 4212, the Storm Water Permit requires coverage for the entire Facility. For facilities classified as SIC Code 4212, the Storm Water Permit requires permit coverage for "vehicle maintenance shops, equipment cleaning operations, or airport deicing operations." Storm Water Permit, Attachment 1. The Storm Water Permit regulates the portions of the facility which are used for "vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or other operations identified herein that are associated with industrial activity." Storm Water Permit, Attachment 1; *see also* Storm Water Permit, Attachment 4 (stating that "storm water associated with industrial activity" includes storm water discharges from material handling activities and storage areas for material handling equipment). Waterkeeper puts the RA Nelson Facility Owners and/or Operators on notice that one or more of these regulated activities is conducted at locations throughout the entire RA Nelson Facility, and thus the entire Facility requires Storm Water Permit coverage. In addition, even if the regulated industrial activities are not occurring throughout the entire Facility at all times, under the Storm Water Permit's definition of "storm water associated with industrial activities" and explanation of material

handling activities, Waterkeeper puts the RA Nelson Facility Owners and/or Operators on notice that since no best management practices ("BMPs") or other controls exist to separate the storm water flows from portions of the Facility where non-regulated activities may occur from storm water flows from the regulated industrial activities, storm water at the Facility commingles and thus, all storm water discharges from the Facility are regulated under the Storm Water Permit.

The pollutants associated with operations at the RA Nelson Facility include, but are not limited to: O&G; heavy metals (such as copper, iron, lead, aluminum, and zinc); TSS, nutrients, synthetic organic compounds, pesticides, pathogens, and trash. Information available to Waterkeeper indicates that solid waste sorting and storage, vehicle fueling, vehicle and equipment storage, and other industrial activities occur at the RA Nelson Facility outdoors without adequate cover or other BMPs to prevent storm water and non-storm water exposure to pollutant sources, and without secondary containment or other BMPs to prevent polluted storm water and non-storm water from discharging from the RA Nelson Facility. Thus, the RA Nelson Facility Owners and/or Operators have not properly developed and/or implemented the required BMPs to address pollutant sources and contaminated discharges. Consequently, during rain events storm water carries pollutants from the Facility's uncovered waste storage and sorting areas, contaminated ground and floors, equipment, washing areas, refueling areas, and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit. The lack of adequate BMPs also results in non-storm water discharges. The resulting illegal discharges of polluted water impact Waterkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

Information available to Waterkeeper also indicates that oil, grease, and other pollutants have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the vehicle and equipment storage areas, the loading and unloading areas, and the driveways leading onto Agua Mansa Road, and other egress and entranceways at the Facility. There are no BMPs, or inadequate BMPs, to prevent tracking. As a result, trucks and vehicles leaving the Facility via the Facility's access roads and driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

C. RA Nelson Facility Storm Water Flow and Discharge Locations

The RA Nelson Facility SWPPP and site map divide the Facility into eleven "drainage areas" identified as Area A through Area K. These areas are described in the SWPPP as follows:

- Area A consists of 4.1 paved acres in the soil amendment production area in the northeast corner of the Facility;
- Area B consists of 3.6 paved acres used for green waste processing to the northeast of the Transfer Station Building, as well as part of an area of land owned by the County, which drains onto the RA Nelson Facility;
- Area C consists of 3.7 acres that include portions of the Transfer Station Building roof, paved driveways and loading and unloading areas around the building, and

paved green waste processing areas to the south and east of the Transfer Station Building;

- Area D consists of 1.8 acres, comprised primarily of the Transfer Station Building's roof, as well as the transfer tunnel and associated ramp that are adjacent to the southeastern side of the building;
- Area E consists of 2.8 acres of pavement to the west of the Transfer Station Building that is used for truck parking, and where scales and a portion of the fueling island are located;
- Area F consists of 0.5 acres made up of the vehicle maintenance-building roof, the adjoining employee parking lot and a portion of the fuel island;
- Area G consists of 1.1 paved acres that include portions of the scale area and employee parking lot;
- Area H consists of 0.2 acres comprised of a portion of the employee parking lot;
- Area I consists of 1.6 paved acres, also comprised of a portion of the employee parking lot;
- Area J consists of 0.2 acres of the maintenance-building roof; runoff from this area is discharged into a landscaped area to the north of the building; and
- Area K consists of a 0.03-acre area within the maintenance building and truck wash bay.

Storm water from each of these drainage areas discharges to Receiving Waters via discharge points located throughout the Facility. The SWPPP claims that "fluids" within the maintenance building and truck wash bay are "captured within the facility and discharged into industrial clarifiers that are connect to the sanitary sewer system."

The Facility's 2012-2013 Annual Report indicates that there are at least six discharge points at the RA Nelson Facility. The SWPPP site map identifies four "SD inlet[s]" and "MP #1" monitoring point 2 ("MP #2") which is located approximately 300 feet to the east of MP #1, along the southern boundary of the Facility; monitoring point 3 ("MP #3"), which is located near the middle of the southeast boundary of the Facility; and monitoring point 4 ("MP #4"), which is located to the north of MP #3, along the eastern boundary of the Facility. Information available to Waterkeeper indicates that there are at least seven additional discharge points at the Facility including, but not limited to: the northern curb of Driveway 1, along which water flows to Agua Mansa Road; the southern curb of Driveway 1, along which water flows to Agua Mansa Road; the northern curb of Driveway 2, along which water flows to Agua Mansa Road; the southern curb of Driveway 2, along which water flows to Agua Mansa Road; and three drain outlets along Agua Mansa Road (not including the MP #1 outlet).

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

A. Discharges of Polluted Storm Water from the RA Nelson Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit

Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or

prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve best available technology economically achievable ("BAT") for toxic pollutants[3] and best conventional pollutant control technology ("BCT") for conventional pollutants.[4] EPA's Industrial Storm Water Permit contains benchmark values, which are objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT, as required by Effluent Limitation B(3) of the Storm Water Permit ("EPA Benchmarks").[5]

Storm water sampling at the RA Nelson Facility demonstrates that concentrations of pollutants in storm water discharges from the Facility exceed applicable EPA Benchmarks. Attachment A contains a table with the dates on which storm water samples reported by RA Nelson Facility Owners and/or Operators since the 2009–2010 Annual Report exceed an EPA Benchmark.

The repeated exceedances of EPA Benchmarks demonstrate that the RA Nelson Facility Owners and/or Operators have failed to develop and/or implement required BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper puts the RA Nelson Facility Owners and/or Operators on notice that they violate Effluent Limitation B(3) of the Storm Water Permit each time they discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards, including, but not limited to, the dates identified in Attachment A. These violations are ongoing and will continue every time the RA Nelson Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper will update the dates of violations when additional information and data become available. Each time that the RA Nelson Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation (B)(3) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since industrial operations began, which appears to be since at least January 14, 2009.

B. Discharges of Polluted Storm Water from the RA Nelson Facility in Violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface water or groundwater that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the

---

[3] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.
[4] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, O & G, pH, and fecal coliform.
[5] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective May 27, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 73 Federal Register 56572 (2008).

Clean Water Act. Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[6] Applicable WQSs include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"). The Basin Plan sets out additional WQSs, including WQSs for total coliform and fecal coliform when the Beneficial Uses of a lake or stream include Municipal and Domestic Supply, Non-contact Water Recreation, and Water Contact Recreation, such as the Receiving Waters. Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

Information available to Waterkeeper indicates that storm water discharges from the RA Nelson Facility contain elevated concentrations of pollutants such as copper, lead, zinc, and pathogens, including coliform bacteria and *Escherichia coli*, among others. The Receiving Waters are impaired for copper, lead, and pathogens. Information available to Waterkeeper indicates that storm water discharges from the RA Nelson Facility containing elevated concentrations of pollutants can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Information available to Waterkeeper further indicates that storm water discharges from the RA Nelson Facility containing elevated concentrations of pollutants cause or contribute to a violation of an applicable WQS. Attachment A contains a table with the dates on which storm water discharges from the Facility since the 2008-2009 Wet Season exceed CTR WQSs.

The repeated exceedances of WQSs demonstrate that the RA Nelson Facility Owners and/or Operators have violated and continue to violate Receiving Water Limitation C(1) and/or Receiving Water Limitation C(2). Waterkeeper puts RA Nelson Facility Owners and/or Operators on notice that they violate Receiving Water Limitation C(1) and/or Receiving Water Limitation C(2) each time storm water discharges from the Facility containing pollutants that adversely affect human health or the environment and/or cause or contribute to a violation of an applicable WQS including, but not limited to, the dates identified in Attachment A. Each time that discharges of storm water from the RA Nelson Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time that discharges of storm water from the RA Nelson Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These discharge violations are ongoing and Waterkeeper will update the dates of violation when additional information and data becomes available. The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since industrial operations began, which appears to be since at least January 14, 2009.

---

[6] WQS include pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the Beneficial Uses of receiving waters. Discharges above WQS contribute to the impairment of the receiving waters' Beneficial Uses.

C. Unauthorized and Authorized Non-Storm Water Discharges from the RA Nelson Facility in Violation of Discharge Prohibition A(1) of the Storm Water Permit

Except as authorized by Special Conditions D(1) of the Storm Water Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1).

Information available to Waterkeeper indicates that non-storm water discharges from the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. Information available to Waterkeeper indicates that unauthorized non-storm water discharges occur at the Facility from dust control and/or when washing and cleaning activities occur without BMPs to prevent the discharge. These non-storm water discharges are not from sources that are listed among the authorized non-storm water discharges in Special Conditions D(1) of the Storm Water Permit and thus are always prohibited without a separate NPDES permit. Information available to Waterkeeper indicates that the RA Nelson Facility Owners and/or Operators have not obtained a separate NPDES permit for the Facility's unauthorized non-storm water discharges, as thus these discharges are in violation of Discharge Prohibition A(1) of the Storm Water Permit.

Certain non-storm water discharges are allowed, such as fire hydrant flushing, drinking fountain water, and landscape watering, only if all requirements under Special Conditions D(1) of the Storm Water Permit are met. Special Conditions D(1) requires, among other things, the development and implementation of BMPs, which must be specifically listed in the SWPPP, to prevent or reduce the contact of non-storm water discharges with significant materials or equipment. The non-storm water discharges also cannot contain significant quantities of pollutants. The RA Nelson Owners and/or Operators consistently report non-storm water observations of irrigation drainage at the Facility (*see e.g.* Annual Reports from 2009-2010 to 2012-2013), which are not "authorized," because the RA Nelson Facility Owners and/or Operators have not developed or implemented the required BMPs to prevent pollutant exposure to the non-storm water, and are not otherwise in compliance with Special Conditions D(1). These non-storm water discharges are not authorized by a separate NPDES permit or subject to Special Condition D(1). Therefore, the RA Nelson Facility Owners and/or Operators are in violation of Discharge Prohibition A(1) for these non-storm water discharges.

Waterkeeper puts the RA Nelson Facility Owners and/or Operators on notice that Discharge Prohibition A(1) of the Storm Water Permit is violated each time non-storm water is discharged from the RA Nelson Facility. These discharge violations are ongoing and will continue until the RA Nelson Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges, or obtain separate NPDES permit coverage. Each time the RA Nelson Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33

U.S.C. § 1311(a). The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act since industrial operations began, which appears to be since at least January 14, 2009.

D. Failure to Develop, Implement and/or Revise an Adequate Storm Water Pollution Prevention Plan

Section A(1) and Provision E(2) of the Storm Water Permit requires dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9). The SWPPP must also be revised as necessary to ensure compliance with the Storm Water Permit. *Id.,* Sections A(9) and A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other information, the SWPPP must include: identification of individual(s) and their responsibilities in developing, implementing, and revising the facility's SWPPP (*see* Storm Water Permit Section A(3)(a)); a site map with information including storm water drainage areas with flow patterns, nearby water bodies, and the location of the storm water collection and conveyance system and associated points of discharge (*see id.,* Section A(4)); and a list of significant materials handled and stored at the facility (*see id.,* Section A(5)). Sections A(7) and A(8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Information available to Waterkeeper indicates that the RA Nelson Facility Owners and/or Operators have been conducting and continue to conduct operations at the RA Nelson Facility with an inadequately developed, implemented, and/or revised SWPPP. For example, the RA Nelson Facility Owners and/or Operators have failed and continue to fail to revise the SWPPP as necessary to develop and implement adequate BMPs to prevent the discharge of polluted storm water from the RA Nelson Facility. Storm water is discharged from the RA Nelson Facility containing concentrations of pollutants above applicable EPA Benchmarks and/or WQSs – in some cases, many times the applicable limit – evidencing that RA Nelson Facility Owners and/or Operators have inadequately developed and/or implemented BMPs at the RA Nelson Facility. In addition, pollutants are observed in storm water discharges, and the need for additional BMPs is noted in Annual Reports, but the SWPPP has not been revised to address these deficiencies. Thus, the SWPPP does not comply with Section A of the Storm Water Permit.

Second, the SWPPP fails to include the information required by Section A. For example, the RA Nelson Facility SWPPP indicates that a list of significant materials that may come into contact with storm water is included in Worksheet No. 2 in Appendix B of the SWPPP. However, the Worksheet No. 2 attached to the SWPPP is blank. Therefore, the RA Nelson Facility Owners and/or Operators failed to include in their SWPPP a list of significant materials handled and stored at the Facility, as required by Section A(5) of the Storm Water Permit. The SWPPP also fails to include the employees responsible for Storm Water Permit compliance, in violation of Section A(3) of the Storm Water Permit.

The SWPPP also fails to include an adequate site map that includes all of the requirements of Section A(4) of the Storm Water Permit. For example, the site map fails to identify all discharge points associated with the storm water collection and conveyance system. Further, the SWPPP states that approximately half the site is unpaved, yet the site map fails to include any areas of soil erosion. An inadequate site map is a violation of Section A(4) of the Storm Water Permit.

These examples of the deficiencies in the SWPPP demonstrates that the RA Nelson Facility Owners and/or Operators have failed to develop, implement and/or revise a SWPPP that complies with the requirements of Section A and Provision E(2) of the Storm Water Permit. The RA Nelson Facility Owners and/or Operators have been, and will continue to be, in violation of the SWPPP requirements each day they operate with an inadequately developed, implemented, and/or revised SWPPP. Every day that the RA Nelson Facility Owners and/or Operators operate the Facility with an inadequately developed, implemented, and/or revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. These violations are ongoing and Waterkeeper will update the number of violations throughout this enforcement action. The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since industrial operations began, which appears to be since at least January 14, 2009.

E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the Storm Water Permit requires facility operators to develop and implement a monitoring and reporting plan ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effective, and are evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. Dischargers must revise and update the M&RP to reflect current BMPs, and as otherwise required by the Storm Water Permit. *See id.*, *see also id.,* Section B(4).

Sections B(3) – B(16) of the Storm Water Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all

drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges during the first hour of discharge at each discharge point of at least one storm event per month during the Wet Season.[7] Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants when conducting observations. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *Id.*, Sections B(3) and (4).

Sections B(5) and B(7) of the Storm Water Permit require dischargers to collect samples of storm water discharges from all locations where storm water is discharged. Under Section B(5) of the Storm Water Permit, the RA Nelson Facility Owners and/or Operators are required to collect at least two samples from each discharge point each Wet Season, including one sample from the first storm event of the Wet Season. These samples must be taken during the first hour of discharge. Storm water samples shall be analyzed for TSS, pH, specific conductance, and total organic carbon or O&G. Storm Water Permit, Section B(5)(c)(i). These samples shall also be analyzed for toxic pollutants and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.*, Section B(5)(c)(ii). Finally, the RA Nelson Facility is classified as SIC Codes 4953 and 5093, so its storm water samples must also be analyzed for: Ammonia (NH3), Magnesium (Mg), Chemical Oxygen Demand (COD), Arsenic (As), Cadmium (Cd), Cyanide (CN), Lead (Pb), Mercury (Hg), Selenium (Se), Silver (Ag); Zinc (Zn), Copper (Cu), Aluminum (Al), and iIron (Fe). *See id.,* Section B(5)(c)(iii); *see also id.,* Table D.

The RA Nelson Facility Owners and/or Operators have been conducting operations at the RA Nelson Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the RA Nelson Facility Owners and/or Operators fail to analyze storm water samples for all Table D pollutants listed above. The RA Nelson Facility Owners and/or Operators also have not analyzed their samples for pollutants likely to be present in discharges in significant quantities. Information available to Waterkeeper indicates that pathogens, including *Escherichia coli* and coliform bacteria, are likely to be present in significant quantities in storm water discharges from the Facility. However, the RA Nelson Facility Owners and/or Operators have not analyzed the Facility's storm water samples for these, or any, pathogens. The failure to sample as required is a violation of Section B(5)(c) of the Storm Water Permit. In addition, because of this failure to sample for all required parameters, the RA Nelson Owners and/or Operators could not fully assess the adequacy of BMPs at the site intended to prevent exposure of storm water to pollutants and the subsequent discharge of polluted storm water from the Facility.

Since obtaining Storm Water Permit coverage in January 2009, the RA Nelson Facility Owners and/or Operators have never sampled storm water from each discharge point. For example, the RA Nelson Facility Owners and/or Operators report that there are at least 6 discharge points at the Facility but they only collect samples from two discharge points. The RA

[7] The Wet Season is defined as October 1 – May 30.

Nelson Facility Owners and/or Operators also consistently fail to collect a sample during the first hour of discharge. Additionally, the RA Nelson Facility Owners and/or Operators failed to sample two storm events in the 2010-2011 Wet Season. Finally, RA Nelson Facility Owners and/or Operators failed to sample the first rain event of the 2009-2010 Wet Season. Therefore, the RA Nelson Facility Owners and/or Operators have repeatedly violated Section B(5)(a) for failing to sample as required.

The RA Nelson Facility Owners and/or Operators also fail to conduct the quarterly visual observations of unauthorized discharges as required by Section B(3) of the Storm Water Permit. For example, the RA Nelson Facility Owners and/or Operators failed to conduct any visual observations of unauthorized non-storm water discharges for the 2009-2010 Annual Report, failed to conduct the required observations in the 1st, 2nd, and 3rd quarters for the 2010-2011 Annual Report, and failed to conduct the required observations in the 2nd quarter of the 2012-2013 Annual Report. Even the quarterly observations that were conducted were incomplete and the information required by the Storm Water Permit was not included in the Annual Reports.

Additionally, the RA Nelson Facility Owners and/or Operators fail to conduct visual observations of authorized non-storm water discharges as required by Section B(3) of the Permit. For example, the RA Nelson Facility Owners and/or Operators failed to report any visual observations of authorized non-storm water discharges in the 2009-2010 and 2011-2012 Annual Reports. In the 2010-2011 Annual Report, no observations were reported in the 3rd quarter, and in the other three quarters, the RA Nelson Facility Owners and/or Operators indicated that they observed discharges, but did not report the location, source, or a description of these discharges. Similarly, no observations were reported for the 2nd quarter in the 2012-2013 Annual Report, and the other quarters fail to contain the information required by the Storm Water Permit. Because the RA Nelson Facility Owners and/or Operators fail to take visual observations of unauthorized and authorized non-storm water discharges as required, they also failed to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor or the source of any pollutants, in violation of Section B(3) of the Storm Water Permit.

Finally, in violation of Section B(4), the RA Nelson Facility Owners and/or Operators fail to conduct all monthly storm water discharge visual observations during the Wet Season. Specifically, in the Facility's 2009-2010 and 2010-2011 Annual Reports no monthly visual observations of storm water discharges were reported. When observations were reported, they were not done for each discharge location and not within the first hour of the discharge. When the RA Nelson Facility Owners and/or Operators fail to take visual observations of storm water discharges as required, they also fail to document the presence of any floating or suspended material, O&G, discolorations, turbidity, odor, or the source of any pollutants, in violation of Section B(4) of the Storm Water Permit.

The RA Nelson Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that they have failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the Storm Water Permit. The RA Nelson Facility Owners and/or Operators have been, and will continue to be, in violation of the M&RP requirements each day they operate

with an inadequately developed, implemented, and/or revised M&RP. Every day that the RA Nelson Facility Owners and/or Operators conduct operations with an inadequately developed, implemented, and/or revised M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. These violations are ongoing and Waterkeeper will update the number of violations throughout this enforcement action. The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since industrial operations began, which appears to be since at least January 14, 2009.

F. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. The Storm Water Permit, in relevant part, requires that the Annual Report include the following: 1) a summary of visual observations and sampling results, 2) an evaluation of the visual observation and sampling and analysis results and the laboratory reports; and 3) the Annual Comprehensive Site Compliance Evaluation Report. Section B(14). As part of the Annual Comprehensive Site Compliance Evaluation, the facility operator shall review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. *See* Storm Water Permit Section A(9). The Annual Report shall be signed and certified by a responsible corporate officer, or a duly authorized representative,[8] under penalty of law that the information submitted is true, accurate, and complete to the best of their knowledge. *See* Storm Water Permit, Sections B(14), C(9), and C(10).

The RA Nelson Facility Owners and/or Operators fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, the RA Nelson Facility Owners and/or Operators certify in their Annual Reports that: (1) a complete Annual Comprehensive Site Compliance Evaluation ("ACSCE") was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that when these certifications were made they were erroneous because an ACSCE that complies with the Storm Water Permit was not conducted, the SWPPP was not evaluated as required, and/or because the BMPs were not evaluated or revised as required. In addition, the Annual Report's Form 5, which is used to record the information collected when conducting the required ACSCE, is blank. Moreover, none of the Annual Reports are signed, indicating that the required ACSCE was not conducted, and that the information in the Annual Reports has not been certified as required. Finally, although in the 2009-2010 and 2010-2011 Annual Reports the RA Nelson Facility Owners and/or Operators declined to certify compliance with the Storm Water Permit, (*see* Section J in Annual Reports), they also answered Yes to all questions in Section H: ACSCE Checklist, such as agreeing that the BMPs and SWPPP are up to date and in compliance with the

[8] Section C(9) lists the requirements for a corporation to delegate responsibility to a "duly authorized representative," which includes, among other things, the requirement that the individual(s) be identified in the SWPPP. Storm Water Permit, Section C(9)(b)(1).

Storm Water Permit, despite the numerous instances of noncompliance during these Wet Seasons, as described above.

The RA Nelson Facility Owners and/or Operators have also submitted incomplete Annual Reports. For example, the laboratory reports of sample analysis have not been submitted, and many of the Annual Report forms are blank and thus do not record the information required by the Storm Water Permit. Further, when the RA Nelson Facility Owners and/or Operators indicate that the Facility does not comply with the Storm Water Permit, they are required to attach an explanation of this noncompliance and how it will be remedied. Specifically, the facility operator must report any noncompliance at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance and, if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 3) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). However, the required explanations are not included in the Annual Reports. For example, a lack of trained staff is given as the explanation for failing to conduct the required observations in the 2012-2013 Annual Report, but nothing is proposed to prevent this from happening again.

Finally, the Storm Water Permit requires a permittee whose discharge exceeds the Storm Water Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards. Storm Water Permit, Receiving Water Limitations C(3) and C(4). Information available to Waterkeeper indicates that the RA Nelson Facility Owners and/or Operators have failed to submit the reports required by Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. As such, the RA Nelson Facility Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

Each of the failures to report as required is a violation of the Storm Water Permit, and indicates a continuous and ongoing failure to comply with the Storm Water Permit's reporting requirements. The RA Nelson Facility Owners and/or Operators have been, and will continue to be, in daily and continuous violation of the Storm Water Permit's reporting requirements until their reporting complies with the Permit. Every day that the RA Nelson Facility Owners and/or Operators operate the RA Nelson Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and Waterkeeper will update the number of violations throughout this enforcement action. The RA Nelson Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 14, 2009.

IV. RELIEF AND PENALTIES SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of a notice of intent to file suit letter. These

provisions of law authorize civil penalties of up to $37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the RA Nelson Facility Owners' and/or Operators' violations of the Storm Water Permit. Please direct all communications to Waterkeeper's legal counsel:

Daniel Cooper
daniel@lawyersforcleanwater.com
Layne Friedrich
layne@lawyersforcleanwater.com
Lawyers for Clean Water, Inc.
1004-A O'Reilly Avenue
San Francisco, California 94129
Tel: (415) 440-6520

Sincerely,

Garry Brown
Executive Director
Orange County Coastkeeper

SERVICE LIST

VIA U.S. MAIL

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Kurt Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California 92501

Attachment A: Table of Storm Water Sampling Data at the RA Nelson Facility Demonstrating Storm Water Permit Violations

Sampling Date	Sampling Location[1]	Parameter	Sample Result	Units	Benchmark[2]	Magnitude of Benchmark Exceedance	CTR Criteria, if exceeded[3, 4]
4/5/10	North Side	Aluminum	12.0	mg/L	0.75	16	
4/5/10	North Side	Copper	0.096	mg/L	0.0123	7.8	0.014
4/5/10	North Side	Iron	16.0	mg/L	1.0	16	
4/5/10	North Side	Lead	0.071	mg/L	0.069	1.03	
4/5/10	North Side	TOC	810	mg/L	110	7.36	
4/5/10	North Side	TSS	410	mg/L	100	4.1	
4/5/10	North Side	Zinc	0.6	mg/L	0.11	5.45	0.12
4/5/10	South Side	Aluminum	16.0	mg/L	0.75	2.33	
4/5/10	South Side	Copper	0.16	mg/L	0.0123	13	0.014
4/5/10	South Side	Iron	22.0	mg/L	1.0	22	
4/5/10	South Side	Lead	0.21	mg/L	0.069	3.04	0.082
4/5/10	South Side	O&G	37	mg/L	15	2.47	
4/5/10	South Side	SC	1000	umhos/cm	200	5	
4/5/10	South Side	TOC	2400	mg/L	110	21.82	
4/5/10	South Side	TSS	1300	mg/L	100	13	
10/1/10	North Side	Aluminum	18.0	mg/L	0.75	24	
10/1/10	North Side	COD	1700	mg/L	120	14.17	

[1] The RA Nelson Facility Owners and/or Operators use inconsistent terms in their Annual Reports and their SWPPP to identify sampling locations. Neither the SWPPP nor the Annual Reports include descriptions of where samples were taken.

[2] Copper and zinc are water hardness dependent. The EPA Benchmarks listed in this table are based on a hardness of 75-100 mg/L. *See* Multi-Sector Permit, pp. 89 and 102 (Subsector K and N Benchmark Values).

[3] The CTR criteria for "priority toxic pollutants" are set forth in 40 C.F.R. § 131.38. These criteria are expressed as dissolved metal concentrations in the CTR. However, the Storm Water Permit requires permittees to report their sample results as total metal concentrations. *See* Storm Water Permit, Section B(10)(b). In order to compare the sample results reported in the Jack's Disposal Facility's Annual Reports with the CTR criteria, Waterkeeper used the CTR criteria converted to total metal concentrations set forth in the State Board's "Water Quality Goals" database, available at http://www.waterboards.ca.gov/water_issues/programs/water_quality_goals/. The formula used to convert the CTR criteria to total metal concentrations is set forth in the CTR at 40 C.F.R. § 131.38(b)(2)(i).

[4] WQS for copper and zinc are hardness dependent. The CTR criteria listed in this table are based on an assumed hardness of 100 mg/L. *See* 40 C.F.R. § 131.38.

10/1/10	North Side	Copper	0.29	mg/L	0.0123	23.58	0.014
10/1/10	North Side	Iron	29.0	mg/L	1.0	29	
10/1/10	North Side	Lead	0.13	mg/L	0.069	1.88	0.082
10/1/10	North Side	SC	670	umhos/cm	200	3.35	
10/1/10	North Side	TSS	1100	mg/L	100	11	
10/1/10	North Side	Zinc	1.6	mg/L	0.11	14.55	0.12
10/1/10	South Side	Aluminum	34.0	mg/L	0.75	45.33	
10/1/10	South Side	COD	2000	mg/L	120	16.67	
10/1/10	South Side	Copper	0.38	mg/L	0.0123	30.89	0.014
10/1/10	South Side	Iron	51.0	mg/L	1.0	51	
10/1/10	South Side	Lead	0.39	mg/L	0.069	5.65	0.082
10/1/10	South Side	O&G	24	mg/L	15	1.6	
10/1/10	South Side	SC	1200	umhos/cm	200	6	
10/1/10	South Side	TSS	2200	mg/L	100	22	
10/1/10	South Side	Zinc	3.1	mg/L	0.11	28.18	0.12
10/7/10[5]	North Side	Aluminum	15.0	mg/L	0.75	20	
10/7/10	North Side	Copper	0.13	mg/L	0.0123	10.57	0.014
10/7/10	North Side	Iron	19.0	mg/L	1.0	19	
10/7/10	North Side	Lead	0.07	mg/L	0.069	1.01	0.082
10/7/10	North Side	O&G	21	mg/L	15	1.4	
10/7/10	North Side	SC	1200	umhos/cm	200	6	
10/7/10	North Side	TSS	600	mg/L	100	6	
10/7/10	North Side	Zinc	0.49	mg/L	0.11	4.45	0.12
12/7/10[6]	South Side	Aluminum	15.0	mg/L	0.75	20	
12/7/10	South Side	Copper	0.15	mg/L	0.0123	12.2	0.014
12/7/10	South Side	Iron	22.0	mg/L	1.0	22	

[5] The results of this sample were typed into a table included in the 2009-2010 Annual Report for the Facility, laboratory results were not provided, so Waterkeeper assumes that the listed date of 10/7/2010 is a typographical error and the correct date of the sample is 10/7/2009, since the listed date of 10/7/2010 is not during the 2009-2010 Wet Season.

[6] The results of this sample were typed into a table included in the 2009-2010 Annual Report for the Facility, laboratory results were not provided, so Waterkeeper assumes that the listed date of 12/7/2010 is a typographical error and the correct date of the sample is 12/7/2009, since the listed date of 12/7/2010 is not during the 2009-2010 Wet Season.

12/7/10	South Side	Lead	0.17	mg/L	0.069	2.46	0.082
12/7/10	South Side	O&G	110	mg/L	15	7.33	
12/7/10	South Side	SC	370	umhos/cm	200	1.85	
12/7/10	South Side	TSS	1100	mg/L	100	11	
12/7/10	South Side	Zinc	1.3	mg/L	0.11	11.82	0.12
11/4/11	MP2	Copper	0.078	mg/L	0.0123	6.34	0.014
11/4/11	MP2	O&G	20	mg/L	15	1.33	
11/4/11	MP2	SC	270	umhos/cm	200	1.35	
11/4/11	MP2	TOC	780	mg/L	110	7.09	
11/4/11	MP2	TSS	320	mg/L	100	3.2	
11/4/11	MP3	Aluminum	5.4	mg/L	0.75	7.2	
11/4/11	MP3	Copper	0.034	mg/L	0.0123	2.76	0.013
11/4/11	MP3	O&G	18	mg/L	15	1.2	
11/4/11	MP3	SC	2600	umhos/cm	200	13	
11/4/11	MP3	TOC	4500	mg/L	110	40.9	
11/4/11	MP3	TSS	2400	mg/L	100	24	
11/4/11	MP3	Zinc	0.18	mg/L	0.11	1.64	0.12
3/17/12	Dock	Copper	0.014	mg/L	0.0123	1.14	0.013
3/17/12	MP2	Aluminum	1.1	mg/L	0.75	1.47	
3/17/12	MP2	Copper	0.017	mg/L	0.0123	1.38	0.013
3/17/12	MP2	Iron	1.6	mg/L	1.0	1.6	
3/17/12	MP2	pH	5.4	pH units	6.0-9.0	n/a	
3/17/12	MP2	SC	1000	umhos/cm	200	5	
3/17/12	MP2	TOC	1800	mg/L	110	16.36	
3/17/12	MP2	TSS	780	mg/L	100	7.8	
3/17/12	MP2	Zinc	0.12	mg/L	0.11	1.09	
3/17/12	MP3	Aluminum	3.1	mg/L	0.75	4.13	
3/17/12	MP3	Copper	0.054	mg/L	0.0123	4.39	0.013
3/17/12	MP3	Iron	4.6	mg/L	1.0	4.6	
3/17/12	MP3	SC	850	umhos/cm	200	4.25	
3/17/12	MP3	TOC	2100	mg/L	110	19.09	
3/17/12	MP3	TSS	2000	mg/L	100	20	

3/17/12	MP3	Zinc	0.13	mg/L	0.11	1.18	0.12
3/17/12	MP4	Aluminum	4.0	mg/L	0.75	5.33	
3/17/12	MP4	Copper	0.041	mg/L	0.0123	3.33	0.013
3/17/12	MP4	Iron	4.4	mg/L	1.0	4.4	
3/17/12	MP4	SC	770	umhos/cm	200	3.85	
3/17/12	MP4	TOC	1200	mg/L	110	10.91	
3/17/12	MP4	TSS	3300	mg/L	100	33	
10/11/12[7]	MP-2 (A)	Aluminum	19.0	mg/L	0.75	25.33	
10/11/12	MP-2 (A)	COD	9900	mg/L	120	82.5	
10/11/12	MP-2 (A)	Copper	0.75	mg/L	0.0123	60.96	0.013
10/11/12	MP-2 (A)	Iron	36.0	mg/L	1.0	36	
10/11/12	MP-2 (A)	Lead	0.2	mg/L	0.069	2.9	0.082
10/11/12	MP-2 (A)	O&G	22	mg/L	15	1.47	
10/11/12	MP-2 (A)	SC	4900	umhos/cm	200	24.5	
10/11/12	MP-2 (A)	TSS	1400	mg/L	100	14	
10/11/12	MP-2 (A)	Zinc	4.4	mg/L	0.11	40	0.12
10/11/12	MP-2 (B)	Aluminum	29.0	mg/L	0.75	38.67	
10/11/12	MP-2 (B)	COD	9500	mg/L	120	79.17	
10/11/12	MP-2 (B)	Copper	3.3	mg/L	0.0123	268.29	0.013
10/11/12	MP-2 (B)	Iron	56.0	mg/L	1.0	56	
10/11/12	MP-2 (B)	Lead	0.36	mg/L	0.069	5.22	0.082
10/11/12	MP-2 (B)	SC	4000	umhos/cm	200	20	
10/11/12	MP-2 (B)	TSS	1600	mg/L	100	16	
10/11/12	MP-2 (B)	Zinc	7.7	mg/L	0.11	70	0.12
1/25/13	MP 2 Post-Filter	Aluminum	5.5	mg/L	0.75	7.33	
1/25/13	MP 2 Post-Filter	COD	490	mg/L	120	4.08	
1/25/13	MP 2 Post-Filter	Copper	0.039	mg/L	0.0123	3.17	0.013
1/25/13	MP 2 Post-Filter	Iron	6.6	mg/L	1.0	6.6	
1/25/13	MP 2 Post-Filter	SC	260	umhos/cm	200	1.3	

[7] The RA Facility Owners and/or Operators reported in the 2012-2013 Annual Report that this sample was taken on 10/12/2012, but the laboratory report states that it was taken on 10/11/2012.

1/25/13	MP 2 Post-Filter	TSS	180	mg/L	100	1.8	
1/25/13	MP 2 Post-Filter	Zinc	0.35	mg/L	0.11	3.18	0.12
1/25/13	MP 3 Post-Filter	Aluminum	11	mg/L	0.75	14.67	
1/25/13	MP 3 Post-Filter	COD	2000	mg/L	120	16.67	
1/25/13	MP 3 Post-Filter	Copper	0.079	mg/L	0.0123	6.42	0.013
1/25/13	MP 3 Post-Filter	Iron	16	mg/L	1.0	16	
1/25/13	MP 3 Post-Filter	SC	1600	umhos/cm	200	8	
1/25/13	MP 3 Post-Filter	TSS	690	mg/L	100	6.9	
1/25/13	MP 3 Post-Filter	Zinc	1.0	mg/L	0.11	9.09	0.12